IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

COMPASS MARKETING, INC.,	:	
Plaintiff	:	
	:	
v.	:	CIV. NO. AMD 04-1663
	:	
SCHERING-PLOUGH CORP., et al.,	:	
Defendants	:	

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MEMORANDUM and ORDER

Plaintiff, Compass Marketing, Inc., ("Compass"), instituted this damages action alleging principally a "price-fixing agreement" violative of federal and state antitrust laws. Defendants are Schering-Plough Corporation, Schering-Plough Health Care Products, Inc., Schering-Plough Health Care Products Sales Corporation, Wyeth (a corporation engaged in the pharmaceutical industry formerly known as American Home Products Corporation), James J. Mackey, and Samuel Severino. Jurisdiction lies pursuant to 28 U.S.C. §§ 1331, 1332, and 1337.

Now pending is a motion by Compass to disqualify the law firm, Robbins, Russell, Englert, Orseck & Untereiner ("Robbins"), from representing defendant Severino because an attorney and a secretary who work for Robbins were previously part of the legal team that represented Compass. The motion shall be denied because it is clear that both the attorney and the legal secretary stopped working on the case before they were employed with Robbins, and it is equally clear that Robbins has taken appropriate measures to prevent both individuals from having any contact with work related to this law suit. Thus, Robbins may

continue to represent defendant Severino, notwithstanding the fact that one of its principals formerly represented plaintiff Compass.

I.

When this lawsuit was filed, on May 26, 2004, Compass was a client of the law firm Kutak Rock, LLP ("Kutak"). The lead plaintiff's counsel was Jeffrey Jacobovitz, Esq. Working with Jacobovitz were Alan Strasser, Esq., an attorney, and Dana Sarti, Strasser's legal secretary, who also holds a law degree.[1] Strasser's level of involvement with the case is disputed by the parties, but for purposes of this motion, I will assume that it was significant enough that he gained knowledge of confidential and privileged information pertaining to both the case and Compass in general. One thing is undisputed: on May 6, 2005, Strasser appeared at a hearing in this court on behalf of Compass. Nevertheless, Jacobovitz was the lead attorney, and when he left Kutak for Schiff Hardin, LLP, he took the client, Compass, with him. Thus, in a June 7, 2005, filing, Jacobovitz informed the court of his change of law firm, and Kutak officially withdrew from the case-- thereby ending Strasser's (and Sarti's) involvement.

On December 31, 2005, Strasser began work as a partner at Robbins; Sarti went with him. Robbins represented Severino. Prior to starting work, however, Strasser had informed the firm of the potential conflict, and the firm had concluded that it could continue to represent Severino so long as it screened Strasser in accordance with the Maryland Rules of

[1]Sarti was also, for a time, secretary to Jacobovitz.

Professional Conduct ("MRPC"). In addition, the firm sent Jacobovitz a letter dated December 9, 2005, in which it outlined how Strasser would be screened. The letter stated:

> Mr. Strasser will be apportioned no part of the fee from our representation of Mr. Severino in any litigation involving Compass; Mr. Strasser will be isolated from confidences, secrets, and material knowledge concerning the matter; Mr. Strasser will be isolated from any contact with Mr. Severino for any purpose, and from any contact with any agent, officer, or employee of Wyeth related in any way to litigation involving Compass and Mr. Severino; Mr Strasser will be isolated from any contact with witnesses for or against Mr. Severino; Mr. Strasser may not discuss the Compass matters with any other lawyer at this firm and may not discuss with any other lawyer at this firm any confidential or secret information he learned from Compass or any confidential or secret information any lawyer at this firm learned from Mr. Severino that is material to litigation between Compass and Mr. Severino; and we will take affirmative steps, before Mr. Strasser arrives at our firm, to ensure that all personnel know that they must abide by these limitations.

Opp. to Pl.'s Mot., Exh. 4A. The firm then implemented a screening regime consistent with the letter it had sent to Jacobovitz. The memorandum outlining the measures to be taken was given to all Robbins staff, who were warned that if they did not follow the procedures they would be disciplined. Decl. of Roy Englert, Opp. to Pl.'s Mot., Exh. 5. Strasser affirmed that he would abide by the agreement. Similar measures were taken with respect to Sarti.

Compass' attorneys did not voice objection to Robbins' screening procedures until a teleconference with the court on March 7, 2006. Compass filed its motion to disqualify Robbins on April 4, 2006.

II.

Because disqualification of an attorney can deprive a party of his choice of attorneys,

courts should only take such a step in rare circumstances. *Gross v. SES Americom, Inc.*, 307 F.Supp.2d 719, 722-23 (D. Md. 2004); *Buckley v. Airshield Corp.,* 908 F.Supp. 299, 304 (D. Md.1995); *Shaffer v. Farm Fresh, Inc.,* 966 F.2d 142, 146 (4th Cir.1992). Moreover, when such an objection is raised by an opposing party, "[s]uch an objection should be viewed with caution . . . for it can be misused as a technique of harassment." *Gross*, 307 F. Supp. 2d at 722-23 (quoting *Comment*, MRPC 1.7). Thus, while I recognize that disqualification is sometimes a necessary remedy for an attorney conflict, it is important that such claims be carefully scrutinized and that other less drastic means be considered before making such action.

Resolution of the motion to disqualify is dictated by MRPC 1.10(c), which states as follows:

> (c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which the newly associated lawyer is disqualified under Rule 1.9 unless the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

This rule clearly addresses the situation now before the court. Compass became a former client of Strasser when Kutak withdrew from the case on June 7, 2005. At that point, Strasser was prohibited from representing an adverse client such as Severino without Compass' consent by MRPC 1.9.

However, the fact that Strasser could no longer represent Severino does not mean that his new law firm could not represent Severino. As MRPC 1.10(c) explicitly states, such

representation may take place so long as the tainted lawyer (here, Strasser) has been timely screened and he will not be apportioned a fee from that client.

In order for Compass to overcome MRPC 1.10(c), it would have to persuade the court that the screening of Strasser was ineffective or impracticable. *See* Comment 6, MRPC 1.10. ("Where the conditions of paragraph (c) are met, imputation is removed, and consent to the new representation is not required. Lawyers should be aware, however, that courts may impose more stringent obligations in ruling upon motions to disqualify a lawyer from pending litigation."). Compass, however, fails to show any concrete flaws in the screening process, other than what it calls "the appearance of impropriety."

I am not persuaded that an appearance of impropriety-- or speculation as to what *could* go wrong-- is enough to disqualify Robbins. Although litigation can certainly be contentious, as is the case here, there is, unless the contrary is shown, a healthy level of trust attorneys, as officers of the court, must have in each other. The proper method of screening an attorney is described in MRPC 1.0(m)[2] and explained in Comments 9 and 10 of the same rule. It is obvious that Robbins tailored its screen to fit the guidelines set forth by the Model Rules. I have no reason to believe the screen will not achieve its purpose. Unless there is concrete evidence that the screen is not being followed, the court and the parties must trust

[2]MRPC 1.0(m) states as follows: "'Screened' denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law."

that the Robbins firm is doing what it says it is doing. As long as this screen is in place, therefore, Robbins may represent Severino in this matter.

III.

Robbins has set up a sufficient screen so that Strasser and Sarti will not taint the Robbins' defense of Severino in this suit initiated by Compass. Robbins' representation may continue so long as the screen is in place. Compass' motion to disqualify, therefore, is DENIED.

Filed: July 6, 2006

/s/
ANDRE M. DAVIS
UNITED STATES DISTRICT JUDGE